

CARMEL CITY CODE
CHAPTER 10: ZONING & SUBDIVISIONS
ARTICLE 1: ZONING CODE
CARMEL ZONING ORDINANCE
CHAPTER 30: BOARD OF ZONING APPEALS

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30.00 Board of Zoning Appeals.¹

The Board is hereby established with membership and appointments provided in accordance with the Advisory Planning Law. Detailed herein are the procedures and so forth relating to Board activities.

30.01 Appeals to the Board.

The Board may hear, review and determine appeals taken from any order, requirements, decision or determination made by the Director or any administrative official or board charged with the enforcement of the Zoning or Subdivision Control Ordinance of the City of Carmel. All appeals shall be filed with the Director within thirty (30) days of the action to be appealed. An appeal shall also be filed where the Board is required to determine a zoning district boundary or the existence of a nonconforming use.

30.02 Appeal Procedure.²

30.02.01 Consultation with the Director and Application. Appellants shall meet with the Director in order to examine the nature of the proposed appeal, review the regulatory ordinances and materials, and review the appeal procedures. The Director shall aid the appellant in preparing his application and supporting documents as necessary. The appellant shall then submit two (2) copies of the written application form and all necessary supporting documents and materials.

30.02.02 Initial Review of the Application and Supporting Documents and Materials by the Director: Submission to the Board. Following the receipt of the written appeal application and necessary supporting documents and materials by the Director, he shall then review the materials solely for the purpose of determining whether the application is complete, is in technical compliance with all applicable ordinances, laws and regulations and is to be forwarded to the Board. If the materials submitted by the appellant are not complete, or do not comply with the necessary legal requirements, the Director shall inform the appellant of the deficiencies in his materials. Unless and until the Director formally accepts the appeal application as complete and in legal compliance it shall not be considered as formally filed for the purpose of proceeding to the succeeding steps

¹ Section 30.00 amended per Ordinance No. Z-365-01.

² Section 30.02 amended per Ordinance No. Z-365-01.

toward Board consideration of the appeal as hereinafter set forth. The application is formally filed when it is placed upon the Board agenda by the Director according to the Board's Rules of Procedure.

30.02.03 Public Hearing by the Board. Once the Director has accepted and filed the appeal application with the Board, he shall assign a docket number and set a date and time for a public hearing as required by the Rules of Procedure of the Board. The appellant shall be responsible for the cost and publication of the required published legal notification of the public hearing. The appellant shall also notify all interested parties and property owners as required by the Rules of Procedure of the Board. The conduct of the public hearing shall be in accordance with the Board's Rules of Procedures.

30.02.04 Approval or Denial of the Appeal by the Board. Following the public hearing on the appeal, the Board shall approve or deny the appeal. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed as in its opinion ought to be done on the premises, and to that end shall have all the powers of the officer or Board from whom the appeal is taken. Upon reaching a decision on the appeal request, the Board shall enter into its records the reasons for its decision and shall provide the appellant with a copy of said reasons, if requested. The Board shall inform the Director and the appellant of its decision, including all conditions contained as a part thereof. All further actions taken by the appellant or the Director concerning the item that was appealed, including the issuance of Improvement Location Permits, shall be subject to said ruling of the Board.

30.03 Stay of Work.

When an appeal from the Director or any official or Board has been filed with the Board, all proceedings and work on the premises upon which the appeal has been filed shall be stayed unless the official or Board from whom the appeal was taken shall certify to the Board that, by reason of facts stated in the certificate, a stay would cause immediate peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Board or by a court of competent jurisdiction, on notice to the official or Board from whom the appeal is taken and the owner or proprietor of the premises affected and on due cause shown. After the owner, his agent and/or a person or corporation in charge of the work on the premises affected has received notice, the Director shall have full power to order such work discontinued or stayed and to call upon the police power of the city or county to give full force and effect to the order.

30.04 Variances.

The Board may authorize in specific cases such variance from the terms of the zoning ordinances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of said ordinances will result in unnecessary hardship, and so that the spirit of the ordinances shall be observed and substantial justice done. In deciding whether or not the applicant has presented sufficient proof to permit the granting of a variance of use, the Board shall determine in writing that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
5. The approval does not interfere substantially with the Comprehensive Plan.

In deciding whether or not the applicant has presented sufficient proof to permit the granting of a variance of development standards, the Board shall determine in writing that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in use of the property.

30.05 Variance Procedure.³

30.05.01 Consultation with the Director and Application. Applicants shall meet with the Director to review the zoning classification of their site, review the regulatory ordinances and materials, review the use and development of the property and to consider the proposed variance. The Director shall aid and advise the applicant in preparing his application and supporting documents as necessary. The applicant shall then submit two (2) copies of the written application form and all necessary supporting documents and materials.

30.05.02 Initial Review of the Application and Supporting Documents and Materials by the Director. Following the receipt of the written variance application and necessary supporting documents and materials by the Director, he shall then review the materials solely for the purpose of determining whether the application is complete, is in technical compliance with all applicable ordinances, laws and regulations and is to be forwarded to the Board. If the materials submitted by the applicant are not complete or do not comply with the necessary legal requirements, the Director shall inform the applicant of the deficiencies in his materials. Unless and until the Director formally accepts the variance application as complete and in legal compliance, it shall not be considered as formally filed for the purpose of proceeding to the succeeding steps toward approval of the variance application as hereinafter set forth. The variance application is formally filed when it is placed upon the Board agenda by the Director, according to the Board's Rules of Procedure.

30.05.03 Public Hearing by the Board. Once the Director has accepted and filed the variance application with the Board, he shall assign a docket number and set a date and time for a public hearing as required by the Rules of Procedures of the Board. The applicant shall be responsible for the cost and publication of the required published legal notification of the public hearing. The applicant shall also notify all interested parties and property owners as required by the Rules of Procedure of the Board. The conduct of the public hearing shall be in accordance with the Board's Rules of Procedure.

30.05.04 Approval or Denial of the Application by the Board. Following the public hearing on the variance application, the Board shall approve or deny the application. The Board, upon approval of a variance application, may at its discretion determine the length of time the variance shall run. The variance may be permanent or it may be set for a reasonable period subject to renewal upon expiration. The Board shall notify the Director and the applicant of its decision on the variance application, including all conditions contained as a part thereof. The Director shall notify the applicant of the time limits set forth in *Section 30.05.05*. All further actions taken by the applicant or the Director concerning the situation for which the variance is filed, including the issuance of an Improvement Location Permit, shall be subject to said ruling of the Board. Failure of the Director to inform the applicant of the time limits set forth in *Section 30.05.05* shall not relieve the applicant of complying with said Section.

A use variance application that is denied by the Board is ineligible to be placed again on the Board's agenda for consideration until the legality of the Board's decision is finally determined by a court, pursuant to judicial review according to the Advisory Planning Law, or for a period of

³ *Section 30.05 amended per Ordinance No. Z-365-01; Z-460-04, §b; Z-509-07.*

twelve (12) months following the date of the denial, whichever is later. In addition, whenever a use variance application is denied, the property involved in the application may not be the subject of a different use variance application, or any Special Use or Special Exception application or rezone proposal, for a period of six (6) months following the date of the denial. The Board may include, in its Rules of Procedure, reasonable time limits respecting the future consideration of development standards variance applications that are denied by the Board.

30.05.05 Time Limit. Any variance which is granted by the Board on a temporary, renewable basis, under the procedures set forth in this Section, shall have been effected within the period of time for which it was granted or said variance shall become null and void. Any variance granted by the Board on a permanent basis, under the procedures set forth in this Section, shall be effected or shall be part of a project on which continuous construction has commenced within one (1) year from the date of the granting of said variance or it shall become null and void. Upon application to the Director before the expiration of said approval, and upon good cause shown, said approval may be extended for six (6) months.

30.06 Conditions Relating to Board Actions in the Flood Plain Districts⁴

The Board may not exercise any of its powers (*i.e.*, Special Uses, Variances, Appeals, *etc.*) in the FP or FW Districts until the Board has received written approval from the Indiana Natural Resources Commission. The Board may not vary flood protection grade requirements in the FF district without written approval from the Indiana Natural Resources Commission.

30.07 Review by Certiorari⁵

Every decision of the Board shall be subject to judicial review, according to the Advisory Planning Law.

30.08 Alternate Procedure⁶

30.08.01 Hearing Officers: Qualifications, Appointment and Removal. Pursuant to I.C. 36-7-4-923, the Commission hereby establishes the position of Hearing Officer. A Hearing Officer must be a member of the Board or an attorney licensed to practice law in Indiana. One (1) or more Hearing Officers shall be appointed by the Commission. A Hearing Officer may be removed from his or her responsibilities at any time by the Commission.

30.08.02 Powers of Hearing Officers. A Hearing Officer has the power of the Board to approve or deny (1) a variance from the development standards of the Zoning Ordinance, in accordance with I.C. 36-7-4-918.5; or (2) a special use or special exception from the terms of the Zoning Ordinance, in accordance with I.C. 36-7-4-918.2.

30.08.03 Procedural Rules Governing Hearing Officers. Except as provided in this *Section 30.08*, all procedural requirements imposed by the Rules of Procedure of the Board, by the Zoning Ordinance, and by I.C. 36-7-4-900 *et seq.* apply generally to the alternate procedure. Specifically, the provisions of I.C. 36-7-4-920(g) regulating communication with any member of the Board shall be construed to prohibit communication by any person (other than the staff as permitted by law) with a Hearing Officer before the hearing with intent to influence the Hearing Officer's action on a matter pending before him or her.

30.08.04 Docketing of Matters; Copies to Members of the Board. After the Director has formally accepted any Developmental Standards Variance, Special Use, or Special Exception application as complete and in legal compliance, the Director may, if the Director believes that it would allow for

⁴ For additional regulations regarding Flood Plain Districts, see *Chapter 22: Flood Hazard Districts*.

⁵ *Section 30.07* amended per *Ordinance No. Z-365-01*.

⁶ *Section 30.08* adopted per *Ordinance No. Z-365-01; Z-453-04, §fp*.

more expedient disposition of the application, place the matter upon a Hearing Officer's agenda instead of placing the matter upon the Board's agenda. Copies of each Hearing Officer's agenda shall also be submitted to all members of the Board, no less than ten (10) days before the Hearing Officer's hearing of the matters on that agenda. Any member of the Board may then communicate with the Director if, in the opinion of the member, the application should be placed upon the Board's agenda.

30.08.05 Transfer to Board's Agenda. The Director may, not less than five (5) days before a hearing before a Hearing Officer, remove any application from the Hearing Officer's agenda if, in the opinion of the Director:

- (1) the approval of the Developmental Standards Variance, Special Use, or Special Exception may be found to be injurious to the public health, safety, morals, and general welfare of the community; or
- (2) the use or value of the area adjacent to the property included in the variance, use, or exception may be found to be affected in a substantially adverse manner.

If the Director removes an application from a Hearing Officer's agenda, the application shall be considered withdrawn, or shall be transferred to the agenda of the Board if requested by the applicant.

30.08.06 Conditions Proposed by Director; Transfer to Board's Agenda. The Director may, not less than five (5) days before a hearing before a Hearing Officer, indicate that he or she does not object to the approval of a Developmental Standards Variance, Special Use, or Special Exception by the Hearing Officer if specified Conditions are attached. If the applicant does not accept these Conditions, the application shall be considered withdrawn, or shall be transferred to the agenda of the Board if requested by the applicant.

30.08.07 Imposition of Conditions by Hearing Officer; Commitments by Property owner; Transfer to Board's Agenda. Following the hearing of an application under the alternate procedure, a Hearing Officer may impose Conditions and may permit or require the owner of a parcel of property to make a written Commitment concerning the use or development of that parcel, as provided in I.C. 36-7-4-921 and the Rules of Procedure of the Board. If the applicant fails to accept these Conditions or fails to make the Commitment, the application shall be considered withdrawn, or shall be transferred to the agenda of the Board if requested by the applicant. The Hearing Officer may not modify or terminate any Commitment, whether made under the alternate procedure or pursuant to an approval by the Board. Such a Commitment may be modified only by the Board itself.

30.08.08 Review of the Decisions of the Hearing Officer. A decision of a Hearing Officer may not be a basis for judicial review, but it may be appealed to the Board. The Board shall conduct a new hearing on the matter and shall not be bound by any Findings of Fact made by the Hearing Officer. A person who wishes to appeal a decision of the Hearing Officer must file the appeal with the Board within fourteen (14) days after the decision is made, as provided in I.C. 36-7-4-924.

**CHAPTER 30: BOARD OF ZONING APPEALS
AMENDMENT LOG**

Ordinance No.	Docket No.	Council Approval	Effective Date	Sections Affected
Z-365-01	76-01a OA	November 5, 2001	November 27, 2001	30.0; 30.2.3; 30.5.3; 30.8
Z-453-04	150-02 OA	August 16, 2004	August 16, 2004	30.08 Summer 2004 v1
Z-460-04	04080064 OA	December 20, 2004	December 20, 2004	30.05.04 Winter 2005 v1
Z-509-07	07060024 OA	November 19, 2007	November 19, 2007	30.05.04 Autumn 2007 v1